BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of:	
Numbering Resource Optimization	CC Docket No. 99-200

FURTHER COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND OF THE PEOPLE OF THE STATE OF CALIFORNIA

The California Public Utilities Commission and the People of the State of California (CPUC or California) submit these Comments in response to the Further Notice of Proposed Rulemaking (FNPRM) issued by the Federal Communications Commission (FCC or Commission) in this docket on March 31, 2000.

I. INTRODUCTION

In the FNPRM, the FCC seeks comment on four issues: 1) what national utilization threshold the Commission should adopt for carriers seeking additional numbering resources (NPRM, ¶ 248); 2) whether covered commercial mobile radio service (CMRS) carriers should be required to participate in pooling immediately upon their implementation of local number portability (LNP) no later than November 24, 2002 (¶ 249); 3) how a market-based number allocation system could be implemented (¶ 251); and 4) what costs and what quantity of those costs appropriately should be included in a recovery mechanism for number pooling costs (¶ 253). The CPUC comments below on each of these issues.

II. THE FCC SHOULD ADOPT A 70 TO 80 PERCENT UTILIZATION RANGE

The Commission states that in comments filed in response to last summer's NPRM, parties proposed utilization thresholds "as low as 60% and as high as 90%". (¶ 248.) Curiously, the FCC tentatively concludes that a "nationwide utilization threshold for growth numbering resources should be initially set at 50%", and would "increase by 10% annually until it reaches 80%". (Id.) The FCC's tentative conclusion is puzzling because the range – 50 to 80 percent – is lower at both ends than the range parties recommended in their comments. California supports use of a range, but believes the range should be much smaller and have a higher floor.

In addition, California opposes the utilization threshold ramp-up, from 50% to 80% over a four-year period, which the FCC proposes. Such an approach would create a very real incentive for carriers to try to obtain as many numbers as possible in the first year or two, regardless of their actual need. Carriers would feel compelled to seek extra numbers because they would know that the utilization threshold would rise over time, thus diminishing their ability to obtain additional numbers in the near future. If the object of setting a utilization threshold is to conserve numbers for future use, then the ramp-up the FCC proposes will have exactly the opposite effect: carriers will grab numbers up front, leaving fewer NXX codes and fewer area codes for later use. California recommends that the FCC adopt either, preferably, a narrow range or alternatively, a fixed utilization threshold which would apply immediately.

A. A Range Would Allow States the Flexibility to Respond to Different Levels of Demand

California has argued previously that maintaining a cohesive national numbering scheme and allocation system does not require absolute uniformity in every element of state and federal

number management.[1] Indeed, the CPUC believes that some flexibility in the ability of state commissions to respond to conditions which vary from state to state is essential if number conservation is to be truly effective. To that end, California believes that the FCC should accord state commissions some discretion in establishing utilization thresholds. States may choose to establish lower utilization thresholds in areas where demand is lower. Or a state commission may determine that a higher utilization threshold is more appropriate in areas outside the top 100 Metropolitan Statistical Areas (MSAs) where states cannot order implementation of number pooling for absence of LNP capability. This measure of discretion will not impinge on carrier business or marketing plans, but will allow state commissions some ability to respond to local conditions, while a fixed national utilization threshold will not allow such flexibility.

Further, the CPUC considers the 80% utilization ceiling the FCC proposes to be reasonable. A ceiling as high as 90%, as some parties recommended in earlier comments, would allow insufficient time between reaching the threshold and the 66 days needed to enter a new NXX code in the Local Exchange Routing Guide. Carriers could easily run completely out of numbers in that 66-day period because the extremely high utilization threshold would simply cut too close to exhaust.

B. Alternatively, the Commission Should Adopt a Nationwide Utilization Threshold of 75 Percent

The CPUC recognizes the FCC's fervent interest in national uniformity, though California remains unpersuaded that complete uniformity in every nuance of number management is necessary to maintain a cohesive numbering system. Nonetheless, if the FCC is convinced that a mandatory national utilization threshold is necessary, the CPUC recommends that the threshold be set at 75%. Five state commissions have adopted a 75% utilization

[1] See CPUC's Reply Comments on the NRO NPRM, filed September 9, 1999, pp. 4-7.

threshold: California (310 NPA), Maine, Massachusetts, New Hampshire and New York. Maine has enforced its 75% utilization threshold since November, 1999, and California adopted the 75% threshold in January, 2000. Carriers have not protested the threshold in either state.[2] In addition, Connecticut is presently considering the same threshold.

The FCC proposes a ramp-up utilization threshold, beginning with a 50% threshold and increasing 10% each year to a ceiling of 80%. (¶ 248.) Because no party supported a utilization threshold as low as 50%, the FCC appears to be proposing a threshold for which no support in the record was identified. The basis for the FCC's proposal, thus, is unclear. In California's view, a 50% utilization threshold is woefully inadequate. It would allow carriers to use just half of the numbers they already possess before seeking more numbers. This, in turn, will lead to more inefficient and wasteful number usage.

The CPUC's Telecommunication's Division recently conducted a study of number usage in the 310 area code.[3] The study revealed that, on average, the utilization threshold for carriers in the 310 area code is not greater than 64%. The Telecommunications Division is aware, however, that the maximum 64% utilization threshold gleaned from the data included in the 310 Report is overstated. Carriers reporting 310 data had not yet subscribed to the limits on the length of time they could age numbers, reserve numbers and consider service orders pending which the FCC adopted in its recent Numbering Resources Optimization (NRO) Order in this docket.[4] In addition, the 64% average utilization level is overstated because of the varying carrier ability to

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[2] We note that several carriers have appealed the CPUC decision adopting the 75% utilization threshold in the 310 NPA. But, the appeal does not complain that the 75% threshold is unreasonable; rather, the carriers assert that the CPUC must conform the measures adopted in our 310 decision, CPUC Decision 99-09-067, to the rules contained in the FCC's March NRO Order.

[3] Report on the 310 Area Code, CPUC Telecommunications Division, March 16, 2000.

[4] FCC 00-104, Report and Order and Further Notice of Proposed Rulemaking, CC Docket 99-200, Released: March 31, 2000.

determine the quantity of reserved numbers they hold[5], because some carriers failed to report data as required by the CPUC, and because the data has not been audited. In any case, the CPUC believes that setting a utilization threshold as low as 50% would produce no positive change in the degree of carrier number use efficiency in California. Further, in the experience of the CPUC staff, a 50% threshold would be a tough sell for the public, which already is enraged over the absence of real controls on carrier access to public numbering resources.

C. The FCC Should Allow One Exception to the Utilization Threshold

California also supports allowing one exception to either a 70% to 80% utilization range, or to a uniform 75% utilization threshold. If a carrier can document, with use of historical data, that the carrier's current supply of numbers will exhaust within three months, the carrier should be able to obtain additional numbers in order to avoid exhausting its supply prematurely. We recommend that three months form the basis for this exception because the carrier's number supply should be less than the six-month inventory carriers may retain under the adopted pooling guidelines. In addition, the CPUC adopted a three-months-to-exhaust criterion for carriers seeking to obtain growth codes in the 310 NPA as part of the pooling trial established there. Since we adopted that "imminent exhaust" criterion, no carrier has formally complained that it is impossible to meet.[6]

D. Rate Center and NPA Utilization Thresholds Need Not Match

The FCC asks parties to comment on whether "utilization thresholds at the rate center level . . . should operate in unison with the thresholds at the NPA level". (¶ 248.) The CPUC

[5] For example, one ILEC did not track reserved numbers separately from assigned numbers, while another ILEC did not track how long it held numbers in reserve.

[6] Nonetheless, the CPUC recognizes that this requirement of our 310 pooling trial must be revisited in light of the March 31st NRO Order.

recommends that for wireline carriers, the utilization threshold apply only at the rate center level because those carriers obtain numbers and use them at that level.[7] For wireless carriers, however, the Commission may wish to consider applying the utilization threshold at both the rate center and NPA level. Unlike wireline carriers, wireless carriers can use the NXX codes they obtain well beyond the boundaries of the rate center, and perhaps even NPA-wide or across NPA boundaries.

III. THE FCC SHOULD GRANT NO ADDITIONAL TIME FOR WIRELESS CARRIERS TO IMPLEMENT POOLING AFTER THEY HAVE DEPLOYED LNP TECHNOLOGY

The FCC asks whether "covered CMRS carriers should be required to participate in pooling immediately upon expiration of the LNP forbearance period on November, 24, 20002". The CPUC's answer is an unqualified "yes".

Covered CMRS providers received an extension of time in early 1999 from the FCC to deploy LNP technology, and that extension of time, as the FCC noted, expires in November, 2002. By then, covered CMRS providers will have had almost four full years, just from the FCC's granting of an extension of time, to deploy LNP technology and to prepare for number pooling. From all indications the CPUC has received, that four-year period should be adequate. Our staff has asked several covered CMRS providers directly in meetings whether they intend to meet the November, 2002 deadline. Every carrier we have spoken to has stated an intent to meet the deadline. Not one carrier has identified a single technical obstacle that would be difficult or impossible to overcome by November 24, 2002. Indeed, one major CMRS carrier recently informed CPUC staff that it would be able to both port and pool numbers by the November, 2002

[7] California also urges the FCC to consider applying the utilization threshold at the 1,000-block level for non-pooling carriers. If the Commission does not do so, then carriers currently unable to pool will have no incentive to preserve clean 1,000-blocks for pooling once LNP is fully deployed and the carriers are able to pool. In the 310 pooling trial, the CPUC required non-pooling carriers to meet the utilization threshold at the 1,000-block level for precisely this reason.

deadline. The carrier did explain, however, that its individual ability to pool would be meaningless without a simultaneous nationwide cutover of all covered CMRS providers.

California suspects that the FCC's question is fueled by a syndrome the CPUC has identified in past pleadings.[8] Carriers tell state commissions one thing, then take a very different message to the FCC. State commission participants in the State Coordinating Group on numbering issues have discussed the prospect of a delay in wireless implementation of pooling.[9] No state indicated that wireless carriers have raised a technical consideration that would justify a delay in implementing number pooling. Yet, discussions with FCC staff revealed that the wireless industry has asserted the existence of technical impediments to meeting the November, 2002 deadline. The FCC should not be swayed by such claims.

Indeed, in similar situations, the FCC has stood firm. In DA 99-781, the Network Services Division, pursuant to delegated authority, denied a petition by Pacific Bell and Nevada Bell for additional waivers of the Commission's dialing parity rules beyond the May 7, 1999 dialing parity implementation date. In their April 2, 1999 petition, Pacific Bell and Nevada Bell (the SBC LECs) had argued that "both companies need to perform system modifications to implement full intraLATA toll dialing parity and cannot do so in time to meet the May 7, 1999 date". (DA 99-781, ¶ 11.) In denying the SBC LECs' request, the Network Services Division stated that the LECs' "failure to reprogram their network to comply with the Commission's May 7 deadline does not constitute a special circumstance that warrants deviation from the Commission's dialing parity rules". (Id., ¶ 13.) In that instance, the SBC LECs had been put on notice in 1996 that the FCC's rules required all LECs to implement dialing no later than February

[8] See CPUC's Reply to Opositions, Comments or Responses to its Petition for Reconsideration of FCC 98-224, the Pennsylvania Order, pp. 2-6.

[9] The State Coordinating Group is an ad hoc group of state commission staff representatives who hold regular conference calls to coordinate implementation of delegated authority to employ conservation measures.

8, 1999.[10] In FCC 99-54, following issuance of the Supreme Court's decision in AT&T v. Iowa Utilities Board[11], the FCC had granted an extension of its deadline for implementing dialing parity from February 8, 1999 to May 7, 1999. Despite knowing of the requirement to implement dialing parity by May 7, 1999, the SBC LECs alleged a technical inability to meet the deadline. NSD flatly rejected that contention.

Similarly, here, covered CMRS providers already have known of the FCC's November 24, 2002 deadline for implementation of LNP for over a year. One of the primary applications of LNP technology is for number pooling. Given the high level of area code activity across the nation for the past two years, covered CMRS providers have been on notice that deployment of LNP technology would be coupled with the need to implement pooling. As noted above, at least one carrier has informed the CPUC that it will be able to perform both functions by that November, 2002 deadline. California urges the FCC not to allow additional time, especially given that carriers still have, as of May 1, 2000, two years and seven months until that deadline comes to pass.

Further, the FCC should be acutely aware of what is at stake in allowing even one month's delay in requiring covered CMRS providers to engage in number pooling. In the 310 NPA in Los Angeles, wireless carriers hold upwards of close to 200 NXX codes, or 25% of the total quantity of NXX codes allocated in that area code.[12] Wireless carriers hold approximately

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[10] See FCC 96-333, Second Report and Order and Memorandum Opinion and Order, released August 8, 1996, ¶ 59; see also Rule 51.211.

[11] 119 S.Ct. 721 (1999).

[12] Report on the 310 Area Code, CPUC Telecommunications Division, March 16, 2000, Figure 1, p. 27. Since the 310 Report was issued, wireless carriers have obtained additional NXX codes in the 310 lottery.

466,000 unused numbers in the 310 NPA.[13] Of those 466,000 unused numbers, 254 thousand-blocks are 0% contaminated, while another 141 thousand-blocks are contaminated from 0 to 10%.[14] Thus, hundreds of 1,000-blocks would be available for pooling today in the 310 NPA if covered CMRS providers were technically capable of pooling.

Each day of delay is a day that covered CMRS providers must continue to draw numbers in blocks of 10,000 regardless of their need or their usage. In four California NPAs with pooling trials slated for this year, CMRS providers continue to draw numbers in blocks of 10,000 for the next thirty months. At the same time, LNP-capable carriers draw numbers in blocks of 1,000. If the CMRS providers draw just one code per month over the next 30 months, each of them would hold a total of 300,000 numbers compared to a total of 30,000 they would draw if they could participate in pooling.[15] To California, it seems inherently unfair to allow CMRS providers additional time to draw numbers at ten-fold the rate of pooling carriers, thus continuing to compromise the longevity of California area codes.

IV. A PRICING SCHEME FOR NUMBERS OFFERS THE ADVANTAGE OF REQUIRING CARRIERS TO PAY FOR A SCARCE RESOURCE

In the FNPRM, the FCC again seeks comment on how a "market-based allocation system would affect the efficiency of allocation of numbers among carriers". (¶ 251.) The FCC expresses its belief that "a market-based approach is the most pro-competitive, least intrusive way of ensuring that numbering resources are efficiently allocated". (Id.) The FCC further notes that many commenters opposed a pricing scheme for numbers. (Id.) The most common reason for opposition to a pricing scheme, the Commission states, was that the 10,000-number

[13] Id. at 31.

[14] Some of these blocks are held by non-covered CMRS providers and would not be available for pooling, even after the November, 2002 deadline.

[15] Certainly, the CMRS providers might draw significantly more numbers than 30,000 over those 30 months if they could pool, but their need may well be for fewer than the 300,000 numbers they could obtain.

allocation system currently in place in most rate centers coupled with a charge for numbers would create a barrier to entry for new competitors. (Id.)

In the CPUC's comments filed July 31, 1999, California differed from the position taken by most states on the question of whether the FCC should establish a pricing mechanism for carrier access to public numbering resources. Indeed, the CPUC generally agreed with the FCC's view that the mere status of numbers as a public resource "is not necessarily an argument against requiring payment for their use". (CPUC's July 31, 1999 Comments, citing the NPRM at ¶ 229.) Conceding the applicability of the economic axiom that if someone must pay for something, he/she will value that item more highly than if the item is obtained for free, the CPUC still identified a number of implementation difficulties the FCC must resolve to make a pricing scheme work. For convenience, the CPUC has attached to these further comments the relevant portions of the CPUC's July 31, 1999 comments addressing the pricing proposal.

While California's position on the proposed pricing scheme has not changed, we would offer the following additional thoughts. First, if the FCC were to establish a license for numbers, as discussed in our July 31, 1999 comments, an annual license fee could resolve one issue we raised there. If all carriers pay an annual fee for numbers, based on the actual quantity of numbers each carrier holds as of, for example, February 1st of every year, and if the fee is only imposed prospectively, then the ILECs would be paying prospectively for their large embedded base of numbers. This would still leave to state commissions the question of whether ILECs should be allowed to recover from their ratepayers any license fee they must pay for the base of numbers. But, it would solve the problem of how to account for the ILECs' embedded base of numbers, which per ILEC vastly outweighs the holdings of any individual new entrant.[16]

[16] The CPUC does not dispute that, as a group, CLCs are currently acquiring NXX codes in greater quantities than the ILECs in California. But on a carrier-to-carrier comparison, each ILEC still possesses more NXX codes

Also, the CPUC wishes to expand slightly its discussion of administrative costs that would be associated with implementing a pricing scheme for numbers. Specifically, California urges the FCC not only to determine what costs would be associated with creating a pricing scheme, but also, with a fair degree of certainty whether the costs would outweigh any real benefit of requiring carriers to pay for the resource.

In our July 31, 1999 comments, California identified several categories of costs which would need to be included in a cost-benefit analysis of imposing a pricing scheme: number distribution costs, utilization monitoring costs, enforcement costs, and costs associated with collecting license fees. Some of these costs legitimately would be required by a pricing scheme while others would not. For example, if a pricing scheme is implemented, each carrier will need to conduct an inventory of its number holdings.[17] Carriers will need to track very closely every number they hold, as well as numbers customers port away, a process that likely will require an upgrade of carrier systems.[18] The FCC should not consider carriers costs of maintaining and tracking a number inventory as costs associated with a pricing scheme – those are costs any company must incur to maintain and track inventory of any kind, whether public numbering resources, gallons of milk, hammers, videotapes, or Beanie Babies.

Nonetheless, the CPUC recognizes that creating a national pricing scheme for telephone numbers, whether the FCC allows states to impose an additional price component[19], may create a

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than any new entrant, by far. In California, each of the two major ILECs, Pacific Bell and GTE California, possess roughly one-half of the NXX codes in each rate center in the respective company's service territory. In some smaller rate centers, the ILEC may hold 90% of the NXX codes, while in a few others, the ILEC may hold only a third of the NXX codes.

[17] Of course, considering the FCC's new requirements for tracking and reporting of both forecast and historical number usage data, carriers should be well positioned to report an annual inventory of number holdings.

[18] Again, this would be a positive result, as California believes that carriers should be tracking every number now, not just because the carrier would have to pay for the number.

[19] See CPUC's July 31, 1999 comments proposing a combined market-based and administratively-determined approach to number pricing.

complex system intended to achieve efficient number allocation, but with costs that outweigh the benefits for both the public and carriers. Admittedly, such a cost-benefit analysis is difficult to make, given that the costs to the public of implementing new area codes have not been quantified, though every state commission knows that the public is increasingly aware of these costs.[20] The CPUC urges the FCC to consider carefully whether the predictable costs associated with the anticipated efficiencies of charging carriers for numbers, on balance, will benefit the public. Only if the answer to that question is "yes" should the Commission proceed with a pricing scheme.

Finally, the CPUC notes the FCC's inquiry as to whether any funds collected from carriers for held numbers should "be used to offset other payments carriers make, such as contributions to the universal service and TRS programs". (¶ 251.) The CPUC has no specific recommendation to offer regarding how such funds should be spent. As a general policy matter, however, California suggests that any funds obtained from charging carriers for numbers would be better spent offsetting costs directly associated with managing the numbering system, such as number pooling costs or number administration costs.

V. THE FCC SHOULD ENSURE THAT LNP RELATED COSTS ARE NOT RECOVERED TWICE

The FCC requests additional cost information, including costs studies that quantify shared industry and direct carrier-specific costs of thousands-block number pooling. (¶ 253.) The CPUC believes that carriers are much better positioned to provide the Commission with estimated costs of implementing thousands-block pooling. The CPUC, however, supports the FCC's intent to ensure that carriers cannot double recover LNP costs. (¶ 216.) As the FCC

[20] Some of those costs cannot be quantified, as they involve intangibles such as inconvenience to customers and lost time trying having to re-dial telephone numbers when an area code change occurs. Still, these external costs clearly exist.

suggests, the federal surcharge recovery mechanism established for LNP cost recovery is already compensating carriers for deployment of LNP technology. Since LNP technology is essential to implementation of 1,000-block pooling, carriers should not be allowed to include LNP-related costs in their estimates of pooling costs.

In addition, the CPUC assumes that the FCC intends to consider in its cost-recovery order only interstate pooling cost issues. As with LNP cost recovery, the CPUC intends to address intrastate cost recovery issues separately and in compliance with the FCC's guidelines for a cost recovery mechanism.[21]

VI. CONCLUSION

For the reasons stated, the CPUC recommends that the FCC adopt a utilization threshold range of 70% to 80%. If the Commission is convinced that a uniform threshold is the preferred course, the CPUC recommends a 75% threshold. California opposes a ramp-up, and opposes a threshold as low as 50%.

The CPUC also urges the FCC not to allow any additional time for wireless carriers to implement 1,000-block pooling after they have reached the deadline for deploying LNP technology. Covered CMRS providers have ample notice, even today, to be ready both to port and to pool.

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[21] We will not reiterate in detail here our view that any analysis of pooling costs must take into account the avoided costs to consumers of not opening new area codes, such as costs for printing new stationery and business cards, advertising costs, etc. In addition, the analysis should account for the expense saved by delaying the need to expand the NANP, which itself the FCC has estimated could cost the U.S. economy between $50 and $150 billion.

California also recommends that the FCC perform a detailed cost-benefit analysis of creating a pricing scheme for numbers. And, the CPUC recommends that the FCC explicitly prohibit carriers from double recovery of LNP costs in connection with recovering pooling costs.

Respectfully submitted,

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EXCERPT FROM CPUC'S JULY 31, 1999 COMMENTS

I. PRICING OPTIONS

The CPUC does not specifically endorse the state outline on the question of whether the FCC should establish a pricing mechanism for carrier access to public numbering resources. Indeed, we have mixed views on the FCC's proposals. California fully appreciates the perspective that numbers might be used more efficiently if the user must pay for the use of the resource. Along those lines, therefore, we agree generally with the Commission that the status of numbers as a public resource "is not necessarily an argument against requiring payment for their use, much as payments are required for other public resources". (NPRM, ¶ 229.) We also agree that if the FCC decides to establish a pricing mechanism for numbering resources, such a system would need to be phased in over time and should not be introduced on a flash-cut basis. (Id., ¶¶ 226, 238.)

We acknowledge the axiom of economic theory that if someone must pay for something, he/she will value that item more highly than if the item is obtained for free. Whether that axiom can be reasonably applied to public numbering resources, however, may be problematic, as noted in the comments below.

A. The FCC's Legal Authority to Create a Pricing Mechanism

The Commission asks first whether it possesses the legal authority to establish a pricing mechanism for numbering resources pursuant to § 251(e)(2) of the 1996 Federal Telecommunications Act. Section 251(e)(2) provides for the costs of numbering administration and of local number portability to be borne by all carriers on a competitively-neutral basis. (NPRM, ¶ 228.) The CPUC believes that it is questionable whether § 251(e)(2) can be interpreted to encompass creation of a pricing mechanism for the use of numbers. Section 251(e)(2) reads as follows:

> The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.

Frankly, we are not sure what Congress meant by the term "numbering administration arrangements". But, we think the more reasonable reading of § 251(e)(2) limits its applicability to recovery of direct administrative costs related to overseeing the allocation of numbers and

management of the national numbering system. Further, we are not sure that Congress envisioned a direct carrier charge for numbers as a competitively-neutral means of recovering those administrative costs. Certainly, establishing a market-based pricing scheme for numbering resources would extend beyond recovery of direct administrative costs since, presumably, a market-based mechanism would be intended to match prices to demand and not to costs. An administrative-cost based scheme might pass § 251(e)(2) muster, but carriers likely would challenge such a scheme.

The FCC may be able to rely on other authority to establish a pricing mechanism for numbering resources, though the CPUC cannot recommend an alternate source for such authority. Thus, if the FCC determines that a policy of charging carriers for use of public numbering resources is appropriate, in the CPUC's view, the FCC should seek express statutory authority to do so.

B. The Scope of the License May Be Indeterminate

Based on the FCC's suggestion that a "license-type arrangement" would be the mechanism through which carriers would obtain access to numbering resources, the CPUC suspects the FCC considers numbers to be analogous to the electromagnetic spectrum. Several years ago, the FCC auctioned off licenses for Personal Communications Services (PCS). Each license authorized the licensee to use a defined portion of the electromagnetic spectrum to provide PCS to the licensee's customers.[22] When a PCS licensee recruits a customer and provides service, the licensee continues to hold the spectrum used to provide the service. If the customer changes from one PCS telephone to another, the licensee still holds the spectrum. And, if the customer changes carriers, the carrier retains the right to use the spectrum, as the customer cannot take the spectrum used to provide PCS service from one carrier to another.

In contrast, once assigned a telephone number, a customer possesses the ability to take, or port, the number from one carrier to another within the customer's exchange.[23] This means that once a carrier obtains numbering resources, neither the carrier nor the FCC can assume that the carrier will retain control over those resources after specific numbers are assigned to end users.

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[22] Similarly, other portions the electromagnetic spectrum are licensed to broadcast licensees who use those portions for their respective radio and television stations.

[23] While this is not true for all wireline customers, or for wireless customers in the U.S. today, eventually we anticipate that all carriers will implement LNP.

Thus, if a carrier is required to pay a license fee to use numbers, the carrier would be paying for the right to obtain and distribute the resource, but would not be guaranteed indefinite use of all numbers obtained.

This is not to say, however, that it would be impossible to design an appropriate pricing policy. Rather, the policy must reflect the fact that the resource can migrate from the licensee to another carrier. Moreover, we thought that the great expense incurred in the financing of LNP sought to give the end user a quasi-right to a telephone number. Thus, the selling of numbers could create a second right, by the carrier assigned the number initially, to the same item – the personal telephone number.[24] Assuming these questions can be resolved, one potential pricing structure would be an annual license fee based on the quantity of numbers each carrier controls, whether in use, not in use, reserved, or otherwise assigned to the carrier. Under this scheme, if a customer is assigned a number by Billy Bob Local Telephone Company, then takes that assigned number to Sierra Sue Telephone Services, only one of those carriers would pay the license fee for access to that number in a given year.[25]

C. Effect of a Pricing Scheme on Smaller Entrants

The FCC itself notes that implementing a pricing mechanism for numbering resources raises special concerns for new entrants.

> Another consideration in determining whether to establish prices for numbers is that the added cost and administrative burden to carriers may inhibit competitive entry if it imposes a disproportionate burden on new entrants. (NPRM, ¶ 230.)

The CPUC does not believe that merely imposing any pricing mechanism would necessarily disadvantage new entrants, even smaller, less well-financed new entrants. The ability of new entrants to compete for numbering resources would depend on how the pricing mechanism is structured, and how much carriers would have to pay for each number or each block of numbers. A smaller competitor may be unable to buy numbers in the same quantity as a larger competitor, but the smaller carrier could well have fewer customers and a commensurate need for fewer numbers initially than a larger, more-established carrier. At the same time, if the

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[24] As a legal matter, it is not clear what rights the carrier, as assignee, and the end user, not a successor but also an assignee, would have to the same telephone number.

[25] Again, this does raise the question of exactly what rights the carrier's license conveys, since the number can travel from carrier to carrier with the customer.

price is set too high, the FCC may inadvertently create a barrier to competitive entry. On the other hand, if the price is set too low, then the purpose of charging for access to numbering resources may be defeated. This again suggests that an annual license fee based on the quantity of numbers would be more appropriate than an initial charge for obtaining numbers.

D. Scope of Administrative Costs

A key component of a pricing mechanism for numbering resources would be the cost of setting up and maintaining the scheme. The CPUC is concerned that if the FCC pursues this option, the costs could easily spin out of control, thus undercutting the purpose and effect of establishing a pricing mechanism because the administrative costs could exceed the benefit gleaned from charging for the use of numbers. The Commission will need to determine with some degree of specificity the scope and reasonableness of the administrative and management costs at the outset. The CPUC is not equipped to offer any estimates, but believes that the administrative costs should include those associated with distributing the numbers, monitoring utilization, collecting the license fees, and enforcing the pricing scheme, i.e., going after carriers who do not pay their fees.[26]

E. Treatment of the ILECs' Embedded Supply of Numbers

Without question, the ILECs possess a large embedded supply of numbers.[27] Many wireless providers also have large supplies of numbers. In the CPUC's view, establishing a competitively-neutral pricing mechanism would require that the ILECs, as well as all carriers currently holding numbers, also pay a license fee for the numbers they already possess at the time the pricing mechanism is put into place.

The significant size of the ILECs' embedded number supply inevitably will raise the question of whether they can recover from their ratepayers any license fees they may have to pay under a future FCC-approved pricing scheme. Some states have adopted a form of price-cap regulation for ILECs, while others have not. In California, the largest four ILECs are subject to

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[26] Again, since establishing a pricing mechanism for recovery of numbering administration costs would, in turn, create new costs to be recovered, it is not certain that these new costs fall within the category of numbering administration costs for which Congress authorized competitively-neutral recovery.

[27] The CPUC is aware of the ILECs' claim that their utilization rate is in the 80 to 85 percent range. To date, we have performed no utilization studies to confirm or dispute this claim. The issue here, however, is not whether the numbers in the ILECs' possession are in use or not in use, but rather, that the numbers have been assigned to the ILECs.

price-cap regulation, while the remaining sixteen, all small companies, are still under cost-of-service regulation. The CPUC is not urging the FCC to resolve state costing and pricing issues, but is alerting the FCC to the difficulties which may arise in the cost treatment of license fees for number resources currently controlled by ILECs.

F. A Third Alternative Would Combine Elements of the Market-Based and Administratively Determined Options

The CPUC does not have specific, detailed comments on either the administratively determined or market-based pricing proposals, primarily because California has not addressed a pricing policy for numbering resources. As a consequence, we cannot explicitly endorse either approach.

We do suggest, however, that the Commission also consider a third option which would combine elements of the two proposals. For example, the FCC could establish the base license fee, or price per number or block of numbers. The Commission could then allow states to apply a market-based component on top of the base fee or price.[28] The FCC could create a range for the market-based component and allow state commissions to select the appropriate component within that range. The range would need to be broad enough to reflect the vast differences in costs of doing business in different parts of the country.

This market-based element could be applied in any extremely competitive market, such as in NPAs in the Los Angeles, San Francisco, Chicago, Miami, or New York metropolitan areas. Or, the market-based component could be invoked only when an NPA has gone into jeopardy. In either situation, the state commission would determine whether and when to apply the market-based component, as well as the level of the market-based price element. Similarly, if the state commission determines that little competition exists for numbering resources, for example, in rural or slow-growth regions, only the administrative-cost based license fee would apply.

This approach would allow the FCC to establish a baseline pricing mechanism to recover administrative costs, but would also provide for a pricing mechanism to reflect conditions of supply and demand in specific NPAs.

[28] Again, this assumes the FCC obtains express authority to establish a market-based pricing scheme.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document entitled "**FURTHER COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND OF THE PEOPLE OF THE STATE OF CALIFORNIA**" upon all known parties of record by mailing, by first-class mail, a copy thereof properly addressed to each party.

Dated at San Francisco, California, this 19th day of May, 2000.

/s/ HELEN M. MICKIEWICZ

HELEN M. MICKIEWICZ